F.R.

IN THE HIGH COURT OF SIKKIM

CRIMINAL REVISION PETITION NO.5 OF 2004

1. M/s. Martin Lottery Agencies Ltd.,
355-359, Daisy Plaza,
6th Street, Gandhipuram,
Coimbatore, having its branch
Office at Samdrupling Building,
Above Law College, Kazi Road,
East Sikkim.

2. Shri S. Martin,
Managing Director,
M/s. Martin Lottery Agencies Ltd.,
355-359, Daisy Plaza,
6th Street, Gandhipuram,
Coimbatore.

3. Shri P. Ravichandran,
S/o Shri K. Periyasamy,
Branch Manager,
M/s. Martin Lottery Agency Ltd.,
Samdrupling Building,
Kazi Road, Gangtok,
East Sikkim.

... **Complainants/Petitioners.**

VERSUS

1. Shri S. Manimaran, Editor,
Athirshtam, No. 11, West Cooum
River Road, Cinthathripet,
Chennai – 600 002.

2. M/s. Athirshtam, Through its Editor,
S. Manimaran, No. 11, West Cooum
River Road, Cinthathripet,
Chennai – 600 002.

... **Accused/Respondents.**

For the Complainants/
Petitioners : Mr. A. Moulik assisted by Mrs. Laxmi Chakraborty, Advocates.

For the Accused/
Respondents : Messrs. K. T. Bhutia assisted by J. K. Chandak and Umesh Gurung, Advocates.

PRESENT: THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.

Date of judgment: 22nd September 2004.

JUDGMENT

SINGH, J.

The Order dated 7th April 2004 passed by the Judicial Magistrate, East Sikkim at Gangtok in Private Complaint Case No.2 of 2004 pertaining to the territorial jurisdiction is the subject matter under challenge in this revision petition.

2. The facts of the case, in a short compass, are as follows:-

The complainants, petitioners herein, filed a complaint-petition before the Court below, as against the present respondents for punishing them for committing the offence punishable under Section 500 I.P.C. by contending, inter alia, that the accused-respondents published defamatory, misleading and derogatory articles/statements in their newspaper "Athirshtam" in its issues dated 8th October 2002, 19th October 2002, 20th October 2002 and 21st October 2002 which harmed the reputation of the complainants/petitioners. By an Order dated 15th November 2002, the learned Court below took the cognizance of the case and, was of the view

that there were sufficient materials for proceedings as against the respondents/ accused under Section 500 I.P.C. and accordingly, summons were issued to them. Thereafter, the accused-respondents entered appearance. On behalf of the accused-respondents, a petition was filed questioning the territorial jurisdiction of the learned Court below which was resisted by the complainants/ petitioners by filing written objection/reply to it.

Upon hearing the parties through their respective counsel, the learned Court below, namely, the Judicial Magistrate, East Sikkim at Gantok passed the impugned Order dated 7th April 2004 by holding that the Court below has no territorial jurisdiction. Being aggrieved by the impugned order, the complainants/petitioners filed this revision petition.

3. At the very outset, Mr. A. Moulik, learned counsel appearing for the complainants/petitioners contended that the Hon'ble Supreme Court of India was pleased to reject the transfer petition filed by the accused-respondents vide, order dated 14th July 2003 passed in Transfer Petition (Crl) No.608 of 2002 with Transfer Petition (Civil) No.282/2003 and in that Transfer Petition, the accused-respondents had taken the plea of lack of territorial jurisdiction of the learned Judicial Magistrate, East Sikkim at Gangtok and upon hearing the

matter, the Hon'ble Supreme Court was convinced that the learned Judicial Magistrate, East Sikkim at Gangtok has territorial jurisdiction to entertain the case and in view of it, the findings of the Court below under the impugned order is not correct and goes against the observation of the Hon'ble Supreme Court. It is also argued that the observation of the learned trial Court to the effect that there is no evidence that the newspaper "Athirshtam" is printed, published and sold or circulated within the State of Sikkim is a wrong observation inasmuch as at the initial stage, the learned Court below was satisfied that there is a prima facie case. According to Mr. Moulik, learned counsel, there is sufficient materials on record to establish the fact that the said newspaper "Athirshtam" was circulated in Gangtok and the said defamatory articles/items were read over and explained to the Witness (P.W.) No.2 at Gangtok and that being the position, the learned trial Court has jurisdiction to try the case. Supporting his arguments, Mr. Moulik, learned counsel had relied upon the following decisions of the respective **High Courts** and **Hon'ble Supreme Court** rendered in -

i) ***P. Lankesh & anr. v. H. Shivappa & anr.*** reported in ***1994 Cri.L.J. 3510***,

ii) ***M. P. Narayana Pillai & ors. v. M. P. Chacko*** & anr. reported in ***1986 Cri.L.J. 2002***,

iii) ***K. M. Mathew & ors. v. K. A Abraham*** reported in ***1998 Cri.L.J. 327***,

iv) ***State of Punjab v. Nohar Chand*** reported in ***AIR 1984 SC 1492***;

and, further contended that there is sufficient materials to prove the publication and circulation of the defamatory articles/items in the said newspaper "Athirshtam" of the accused-respondents at Gangtok, Sikkim and as such, the Court at Gangtok, Sikkim has jurisdiction to entertain and try the case.

4. At the hearing, Mr. K. T. Bhutia, learned counsel argued that the trial Court rightly held that it has no territorial jurisdiction under the impugned order, thus dropping further proceedings of the case for want of territorial jurisdiction inasmuch as the related newspaper has its Head Office at Madurai and at the same time all the parties are residents of Tamil Nadu and as such, jurisdiction of the case is vested and restricted to the competent Court at Madurai, Tamil Nadu and apart from that, there is no material on record for establishing the factum of publication and circulation of the said newspaper "Athirshtam" at Gangtok, Sikkim and, over and above this, it is a fact that such newspaper in Tamil language is not sold and available or circulated in Sikkim and that being the position, the trial Court has lack of territorial jurisdiction and accordingly, the trial Court rightly opined

that it has no territorial jurisdiction. Replying to the submissions of Mr. Moulik, pertaining to the dismissal of the transfer petition, Mr. Bhutia, learned counsel contended that the dismissal order passed in the transfer petition is a dismissal simplicitor and not a speaking order, and the said order dated 14th July 2003 was passed by the Hon'ble Supreme Court before the impugned order dated 7th April 2004 was passed by the trial Court below. It is further argued that the order of the Hon'ble Supreme Court dismissing the related transfer petition does not debar the trial court to consider and examine the issue of its territorial jurisdiction raised by the accused-respondents, even though, the grounds for transfer of the case contained the plea of lack of territorial jurisdiction. In support of his contention, Mr. Bhutia, learned counsel had relied upon the following decisions of the **Apex Court** rendered in -

i) ***State of Manipur & ors. v. L. Ongbi Sahayaima Devi*** reported in ***AIR 1996 SC 2124***,

ii) ***Saurashtra Oil Mills Association, Gurajat v. State of Gujarat & anr.*** reported in ***AIR 2002 SC 1130***;

and, contended that dismissal of a petition in limine does not amount to acceptance of correctness of decision sought to be appealed against and it does not attract of doctrine of merger

and view expressed in impugned order does not become view of the Hon'ble Supreme Court.

5. Now, this Court is to see and examine as to whether the impugned order dated 7th April 2004 passed by the trial Court is tenable in the eye of law or not?

It is true that cognizance of the case was taken by the trial Court on 15th November 2002 and transfer petition was moved before the Hon'ble Supreme Court of India which was dismissed vide, Order dated 14th July 2003 passed in Transfer Petition (Crl.) No.608 of 2002 with Transfer Petition (Civil) No.282/2003. For better appreciation in the matter, the Order dated 14th July 2003 passed by the Hon'ble Supreme Court is relevant and accordingly, it is quoted below: -

" **TRANSFER PETITION (CRL) NO. 608 OF 2002**

S. Manimaran & Anr. Petitioner (s)

Versus

M/s. Martin Lottery Agencies Ltd. & Ors. Respondent (s)

with TRANSFER PETITION (CIVIL) No.282/2003

O R D E R

The Transfer Petitions are dismissed.

New Delhi,
July 14, 2003"

6. On perusal of the order passed by the Hon'ble Supreme Court of India on 14th July 2003, this Court may opine that the Transfer Petition was dismissed in limine and the same does not contain the reasons for dismissal or non-acceptance of the alleged pleas of the territorial jurisdiction as stated by the accused-respondents in the related Transfer Petition which, according to me, it shall not prevent or debar the trial Court to decide the issue pertaining to territorial jurisdiction as raised by the accused-respondents under a separate application. In other words, after the issuance of processes as required under Section 204 of the Cr.P.C. and after the personal appearance of the accused as well as commencement of the proceedings by the Magistrate, the accused person(s) has/have a legal right to raise the issue pertaining to territorial jurisdiction of the trial Court in terms of the related provisions of law laid down under Sections 177 to 189 of Chapter XIII pertaining to the jurisdiction of the criminal courts in inquiries and trials. I am also of the view that such right of the accused persons to raise the question of territorial jurisdiction before the trial Court cannot be deprived of and accordingly, the trial Court took up the issue and examine the matter. Now, a question arises at this stage as to whether the Court below, i.e. the trial Court has its territorial jurisdiction in the instant case or not? It is to be

seen that in the instant case whether the said newspaper "Athirshtam" containing the alleged defamatory articles/items which was printed and published at Madurai, Tamil Nadu has been sold and circulated at Gangtok in Sikkim. In order to maintain the prosecution for defamation as against the present accused-respondents, the trial Court was to see and examine whether there be any publication of the libel or defamatory articles within the jurisdiction of the trial Court where the complaint-petition was filed by the present complainants/ petitioners. From the statements of the P.W. Nos.1 and 2 recorded under Section 200 of the Cr.P.C., it is seen that the complainants made attempt to establish the factum of circulation of the said newspaper "Athirshtam" at Gangtok at the instance of the respondents/accused with an evil intention to harm the reputation and goodwill of the complainants/petitioners. The related statements of the P.W. Nos.1 and 2 are relevant for just determination of the real points in controversies between the parties and accordingly, it is quoted below: -

Statement of P. Ravichandran, P.W. No. 1

> " The news papers i.e. respondent No.2 was found circulated at the instance of respondent at Gangtok with an evil intention to harm the reputation and good will of the complainant. In the capacity of the complainant No.1 in Sikkim I am also affected and defamed as a servant of the Company. Every day our customers who had been purchasing tickets from our agents have been leaving us improperly and have lost confidence on the complainant. As a result of such

false publication public has lost their total faith and had started doubting the fairness of the lotteries represented by and through the complainant. Respondent No.1 is responsible for such publication. The respondent have made such false and defamatory publication knowing well that such publication will harm the reputation of the complainant and also in the estimation of lottery ticket purchasers or the prestige of the complainant is bound to be undermined. "

Statement of Bedu Singh Pant, P.W. No. 2

" I came across a rumour at Gangtok that in a news papers published from South India some news items have come out disclosing that the complainant are dealing with prizes of lottery tickets run by them in a clandestine way and are cheating the public by not giving the lottery prizes to the winner. I saw some of the news papers namely exbt. P1, P3 & P5 all in Tamil language. Some of my friends had brought these papers to my place and make me understand the said news item in Nepali Language where from I came to know that the complainant have cheated more than rupees one thousand crores in a year by not publishing the winning prizes in the news papers and even by way of not giving the total prize money to the customers. It has been written that while the complainant had to pay several lakhs of rupees against prize money they paid only a little amount out of it to the public winning lottery tickets. It is also found that the complainant have also not paid royalties to the Govt. against the lottery tickets while purchasing the same. In order to know the reality I had visited the office of the complainant at Gangtok and met the complainant No.3 who said that respondents are publishing defamatory items of the nature with ulterior motive which according to complainant No.3 is false. "

7. A bare reading of the above statements of the P.W. Nos.1 and 2 shows that the statements pertaining to the circulation at the instance of the respondent (emphasis given) at Gangtok with an evil intention to harm the reputation and goodwill of the complainant (emphasis given) is vague inasmuch as there are two respondents and three complainants/petitioners in the case in hand. The said witness P.W. No.2 claimed to be a regular purchaser of different lottery tickets and according to him, he came across

a rumour about news item published from South India and some of his friends had brought these newspaper in Tamil language to his place and make him understand. According to me, there is no identity of his friends, how many of them, and where and when, they make him understand the said news items in Nepali language. Not a single friend of him or any other customer who visited the complainant No.3, i.e. P.W. No.1 everyday nor, any of the friends of the P.W. No.2 was examined at the time of taking cognizance of the case or produced by the complainants/petitioners for examination of any one of them by the trial Court! Hence, there is no material on record to show that the said newspaper "Athirshtam" was circulated and sold at Gangtok, Sikkim and as such the trial Court had rightly held that it has no territorial jurisdiction to entertain and try the case under the impugned order.

8. It is well settled that crimes are local and justifiable only by the local Courts within whose jurisdiction those crimes are committed and only when a criminal offence commenced within the jurisdiction of one Court and completed within the jurisdiction of another Court, it may be tried by either of the Courts but, it is to be seen by the Court that the area within which offence is committed as the same is relevant for deciding the place of trial and if the offence is committed

wholly outside the jurisdiction, a Magistrate cannot try the case. In the case in hand, even assuming the offence is committed at Madurai, Tamil Nadu, the parties being the residents of Tamil Nadu, Madurai is the right place of trial and mere statement of a witness that he heard rumours about the publication of the defamatory articles/items in the newspaper "Athirshtam" in Tamil language and some of their friends had brought those newspapers and made the witness understood in Nepali lagunage and, knowledge of such rumours at Gangtok will not constitute the requirements of publication or circulation or selling of those newspapers at Gangtok within the territorial jurisdiction of the trial Court.

9. The **Apex Court** had laid down the law pertaining to the dismissal of special leave petition in limine without a speaking order and also dealt with the "doctrine of merger" in a case between ***Saurashtra Oil Mills Association, Gujarat v. State of Gujarat & anr.*** reported in ***AIR 2002 SC 1130***, wherein the **Apex Court** held thus -

> " 14. .....
> Repeatedly, it has been held that dismissal of special leave petition without a speaking order would only mean that the Court was not inclined to exercise its discretion in granting leave to file the appeal. It does not attract the doctrine or merger and the view expressed in the impugned order does not become the view of this Court. The dismissal of the special leave petition by a non-speaking order would remain a dismissal simplicitor in which permission to file the appeal to this Court is not granted. This may be because of various reasons. It would not mean to be the

> declaration of law by this Court. In a recent judgment of three member Bench in Kunhayammed v. State of Kerala, 2000 (6) SCC 359 2000 after exhaustive consideration of the entire case law this Court has reaffirmed this position. Summing up the conclusion in clause (iv) of para 44, it was held :
>
> "(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed."

Similarly, in a case between ***State of Manipur v. Thingujam Brojen Meetei*** reported in ***AIR 1996 SC 2124***, the **Apex Court** held thus –

> " 9. .....
>
> The dismissal of a special leave petition by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against. The effect of such a non-speaking order of dismissal without anything more only means that this Court has decided only that it is not a fit case where the special leave petition should be granted. Such an order does not constitute law laid down by this Court for the purpose of Article 141 of the constitution. [See: M/s. Rup Diamonds v. Union of India, (1989) 2 SCC 356 (2) : AIR 1989 SC 674); Late Nawab Sir Mir Osman Ali Khan v. Commr. of Wealth Tax,] Hyderabad, 1986 Supp SCC 700: (AIR 1987 SC 522) and Supreme Court Employees' Welfare Association v. Union of India, (1989) 4 SCC 187 : (AIR 1990 SC 334). The High Court was, therefore, in error in holding that by dismissing the special leave petition against the judgment in N. Arun Kumar Singh v. The State of Manipur (supra), this Court has affirmed the said decision of the High Court and the said view of this Court is binding under Article 141 of the Constitution."

While deciding this present petition, this Court relied upon the decisions of the Apex Court rendered in ***Saurashtra Oil Mills Association, Gujarat v. State of Gujarat*** (supra) and

State of Manipur v. Thingujam Brojen Meetei (supra). As discussed above, the Transfer Petition filed by the accused-respondents was dismissed by the Apex Court not on merit of the case and as such, the trial court can go into the merit of the issue pertaining to the territorial jurisdiction and accordingly, the trial Court decided the related legal issue under the impugned order. I am of the view that the case laws cited by Mr. A. Moulik, learned counsel for the complainants/petitioners do not help the case of the petitioners, but, it supports the case of the accused-respondents. According to me, the order of dismissal of the Transfer Petitions does not debar the trial Court to proceed with the case and, decide the issue relating to territorial jurisdiction as highlighted above and as such the High Court shall not interfere with the impugned order, as there has not actually been a failure of justice in the case in hand. It may be mentioned that, not a single independent witness from Madurai, Tamil Nadu or from Gangtok has come forward at the time of taking of cognizance of the case to support the case of the complainants to the effect that the accused-respondents had published defamatory articles in the said newspaper and publication was made in order to harm the reputation of the complainants/petitioners and to defame them and such publication in the said newspaper is/was

circulated at Gangtok in Sikkim also or, that such newspaper has been sold or, circulated within the territorial jurisdiction of the trial Court. According to me, the Magistrate while exercising her jurisdiction in terms of the provision of law laid down under Chapter-XV of the Code of Criminal Procedure, 1973 is not only to consider whether a prima facie case exists or not on the basis of the complaint and the statements of the complainants and the witnesses present, if any, as required under Section 200 of the Cr.P.C., but also it is the lawful duty of the Magistrate to examine and consider as to whether there is sufficient materials on record to show the prima facie case that the said alleged defamatory articles have been published or circulated at Gangtok or that the said newspaper has been sold at Gangtok in Sikkim or that statements of the P.W. Nos.1 and 2 would suffice in making out a prima facie case for territorial jurisdiction, or that such circulation or publication, if any, at Gangtok would enable the trial Court to proceed with the case under its territorial jurisdiction knowing fully well that the said articles/news items were published in the newspaper, namely "Athirshtam" at Madurai, Tamil Nadu in Tamil language! In the instant case, according to me, the trial Court after taking cognizance of the case came to know the real position pertaining to its territorial jurisdiction on the motion of the accused-respondents and

accordingly, the trial Court decided the related issue according to law under the impugned order which, according to me, it does not suffer from any infirmity or illegality.

10. For the reasons, observations and discussions made above, the complainants, petitioners herein could not make out a case to justify interference with the impugned order as the impugned order does not suffer from any infirmity or illegality. In the result, the petition is devoid of merit and accordingly it is dismissed thus affirming the impugned order dated 7th April 2004 passed by the Judicial Magistrate, East Sikkim at Gangtok in Private Complaint Case No.2 of 2004 with a cost of Rs.5,000/- (Rupees five thousand) which shall be treated as part of the funds of the Bar Association of Sikkim for which the complainants/petitioners shall deposit the said cost of Rs.5,000/- with the General Secretary of the said Bar Association within 2 (two) weeks from today.

(N. S. Singh)
Judge
22-09-2004